STATE OF MICHIGAN

IN THE SUPREME COURT

PETER BORMUTH,

Plaintiff - Appellant,

v.

GRAND RIVER ENVIRONMENTAL ACTION TEAM & KENNY PRICE, PRESIDENT

Defendant - Appellee

Supreme Court Docket No. 153007

Court of Appeals Docket No. 321865

4th Judicial Circuit Court No. 14-279-CE

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PLAINTIFF-APPELLANTS' REPLY TO DEFENDANT-APPELLEES' RESPONSE TO PLAINTIFF-APPELLANTS' APPLICATION FOR LEAVE TO APPEAL

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LEGAL ARGUMENT

This case presents the Court with the question of whether non-profit corporations incorporated under the Michigan Nonprofit Corporation Act of 1982, MCL 450.2100 *et seq* have beneficiaries. The Court of Appeals has ruled that defendants/appellee GREAT, a non-profit incorporated under said Act "to preserve, promote, and protect the Grand River in Jackson County" has no beneficiaries because they are a corporation and not a trust. Determining whether non-profit corporations have beneficiaries is clearly an issue of major significance to the State's jurisprudence. There is no case law in Michigan supporting the absurd claim that non-profit corporations have no beneficiaries. Michigan law, in the absence of a conflicting statute or ruling, follows common law. And common law, case law from numerous other states, and basic common sense all support and recognize that non-profit corporations must have beneficiaries that they serve. If this Court fails to review this clearly erroneous ruling, then it will have created an entirely new legal entity: a non-profit that has no beneficiaries.

Contrary to the claims of the Appellee, the Appellant has argued from the beginning of this case that he is a beneficiary of GREAT due to his third party status as a canoeist and the fact that the State of Michigan conveyed a piece of property to GREAT for the purpose of building a dock for launching canoes and kayaks (non-motorized craft) (Plaintiff's Amended Complaint, ¶ 6, 7, 8, 9, 10). As the Appellee notes, the Appellant never claimed to be a member of GREAT. The Appellant does not join environmental organizations that function to protect polluters rather than the environment. The Appellant's right to bring this claim for breach of fiduciary duty stems from GREAT's ownership of this land, the conveyance of this land from the State of Michigan for

the purpose of building a non-motorized boat launch, GREAT's incorporating principals "to preserve, promote, and protect the Grand River", Jack Ripstra's status as engineer of Blackman Township (the legal entity previously determined to bear legal responsibility for conveyance of pollutants from the Jackson County Resource Recovery Facility to the City of Jackson Wastewater Treatment and thence to the Grand River), and the Appellants status as a canoeist. A plaintiff in Michigan can bring suit on a contract to which he is not a party, if it is determined that the plaintiff was an intended third-party beneficiary of the contract. To be an intended beneficiary, the promisor must have undertaken to do something to or for the benefit of the party asserting status as an intended beneficiary. *Rieth-Riley Construction Co, Inc v Dep't of Transportation,* 136 Mich App 425, 430; 357 NW2d 62 (1984), *lv den* 425 Mich 911 (1985). GREAT sought this land transfer in order to build a non-motorized dock open to the general public for canoeists and kayakers who paddle the Grand River. As a canoeist, Appellant is an obvious beneficiary of this action. GREAT currently possess and controls the property at issue and has invited canoeists and kayakers onto the premises for the purpose of launching their boats. Generally, a property possessor owes a duty to invitees to exercise reasonable care to protect them from an unreasonable risk of harm caused by a dangerous condition on the land. The Appellant informed GREAT about the possibility of dioxin pollution in this stretch of river. He told them he contracted a chloracne rash from contact with the river offshore their property. He requested permission to enter the land with qualified technicians to take sediment samples to be sent to a world class laboratory specializing in testing for dioxins and furans at no cost to GREAT. Inconceivably, GREAT denied this request, despite their duty to act to preserve and protect the Grand River, as well as their duty of care to protect the health of boaters they have invited onto their land.

The Appellant notes the exceptional circumstances which surround this case. The County of Jackson's Resource Recovery Facility discharged 65,000 gallons of ash quench water a day into the Blackman Township sewer system, which conveyed it to the City of Jackson Wastewater Treatment plant, for 30 years. This effluent tested positive for elevated levels of dioxins and furans in 1988/1989/1990 before testing was suspended by the DNR in 1991. No tests on the effluent have been conducted between that time and the closure of the facility in October of 2014. The facility was originally licensed pursuant to Act 641 PA 1978, but Act 209 PA 1987 provided an exemption from licensure requirements for municipal incinerators meeting certain criteria. Despite the fact that the Jackson incinerator was the only incinerator designed and operating in the State that discharged its ash quench water into a sewer system instead of recycling it in a sealed system, the Jackson incinerator met the exemption criteria and the DNR suspended testing of the effluent. The Appellant approached the EPA, the MDEQ, Jackson County, and the City of Jackson with requests to test this effluent since the EPA had authorized a new test for dioxins/furans in October of 1994. All four of these various levels of government (City, County, State, and Federal) denied the Petitioner's request. The MDEQ suggested that the Petitioner take effluent or sediment samples and the MDEQ would review the results. The Petitioner sent e-mails and left phone messages for Blackman Township Engineer Jack Ripstra with a request to test effluent in their sewer line and never received a response. The petitioner contacted the Michigan Department of Corrections (which owns the land on the east bank of the Grand River opposite from GREAT) with a request to enter their land to take sediment samples and this request was denied by (then) Director Dan Heyns. And the Petitioner contacted GREAT,

a non-profit incorporated to protect and preserve the Grand River, and was denied access to the land they received for one dollar from the State of Michigan.

Jack Ripstra is Treasurer of GREAT. Jack Ripstra is also the Blackman Township engineer. Blackman Township faces liability if testing found dioxin pollution in the proposed sampling. Jack Ripstra sat on the subcommittee which considered the Appellant's request. The Petitioner acknowledges that he failed to name Jack Ripstra in his Amended Complaint and suggests that allowing the Appellant to amend his complaint to include Jack Ripstra as a named party would make the Appellant's claim for breach of fiduciary duty, that of loyalty, enforceable. The facts as this Court must accept them show that the Appellant is clearly a third party beneficiary of GREAT and undeniably show that Jack Ripstra violated his duty of loyalty. This case should be returned to Circuit Court for further proceedings.

The Appellant believes his religion did play a role in the Appeals Court decision and in the decision of GREAT to deny the Appellant access to their land. The Appellant notes that every member of the GREAT board is a Christian. The Appellant notes that every Jackson County Commissioner is a Christian. The Appellant notes that every City of Jackson Councilmember is a Christian. And the Appellant notes that apparently all three Judges on the appellate panel that heard this case were Christians. The Court knows that there is a war going on in the United States. This cultural war is being financed by ultra-rich business people like the DeVos family and is driven by a doctrine and audience that even thirty years ago was regarded as lunatic fringe. When the Appellant was growing up the New Testament was regarded as a children's story that no one over the age of fourteen took seriously. Today the Christian movement is mainstream and counts

the Republican Party as one of its appendages. These Christian fundamentalists believe in a literal interpretation of the Bible. In Genesis, the Christian Deity blesses Adam & Eve and commands them to "Be fruitful and multiply and fill the earth and conquer it, and take dominion over the fish of the sea and the fowl of the heavens and every beast that crawls upon the earth." And after the Flood, God repeats this injunction to Noah and his sons: "And the fear and dread of you shall be on all the beasts of the field and all the fowl of the heavens, in all that crawls on the ground and in all the fish of the sea. In your hand they are given."

Charles Darwin shattered this Christian dominion theology with the publication of the Origin of Species in 1859, but as early as 1838 in his "C" notebook Darwin had concluded that once you grant that species "may pass into one another," then the "whole fabric (of Christian theology) totters & falls." "Man," Darwin understood, "he is no exception." Slowly Darwinian ideas advanced in this country until the Scopes trial in 1925, when in the court of public opinion Clarence Darrow sent the evangelists packing off to the backwaters and lunatic fringe. With some modifications, Darwin's ideas still stand. If the early 20th century was too focused on competition between species to see all the examples of cooperation in nature, today we recognize both forces. Discoveries in genetics and advances in the field of microbiology have provided support for Darwin's theory. Modern scientists like Lynn Margulis and James Lovelock, inventors of the Gaia Theory, can write with certainty in their book "Gaia: The World as a Living Organism" that "at the cellular level, all life on Earth is related" and that "the biosphere behaves like an organism." This parallels the ancient Pagan idea that the Earth is a living being. Pagans believe we are part of a larger web and humans are no exception. The doctrine of evolution and these ancient Pagan ideas directly confront and contradict the resurgent Christian theology with its

emphasis on private property rights to the exclusion of the public interest and public trust in our shared water and air. The Appellant rejects the notion that the statements made by the Court of Appeals panel did not violate the appearance of impropriety standard. The judicial conduct that the Appellant observed was sufficient to create in reasonable minds a perception that the panel's ability to carry out judicial responsibilities with integrity, impartiality and competence was impaired.

CONCLUSION

On January 12, 2016 the Appellant attended a meeting of the Jackson City Council. Agenda Item 11. A. involved the 2016 contract for the sale and land application of biosolids from the City's Wastewater Treatment Plant. To his horror the Appellant discovered that during the entire period of operation of the JCRRF, the City of Jackson has been selling the biosolids (sludge) produced at the City Wastewater Treatment Plant to individual contractors who have applied it to Jackson County's agricultural land. These biosolids were never tested for dioxins. If the Appellant is correct that the effluent from the JCRRF contained significant levels of dioxin and furan contamination, these harmful chemicals have been spread over our farmland, in addition to being dumped in the Grand River. The Appellant subsequently made a FOIA request for the land application records which is in the process of being fulfilled.

On February 16, 2016 the Appellant went to the Jackson County offices to get an application to fill a vacancy on the County Planning Board. One position is reserved for an "environmentalist" and is currently vacant. The application contained instructions that applicants should get

approval from certain “stakeholders” to qualify to fill this position. GREAT was one of those stakeholders.

The Court of Appeals has ruled that non-profit corporations do not have beneficiaries. The Court of Appeals has ruled that a non-profit corporation dedicated to protecting and preserving the Grand River in Jackson County can prevent testing designed to protect and preserve the Grand River. The Court of Appeals has ruled that a representative of the governmental body with legal liability for possible contamination of the Grand River can sit on the Board of Directors and subcommittee of the environmental organization which considered and then rejected the Appellant’s request to test the Grand River without violating the duty of loyalty. The Court of Appeals deliberately made comments at oral argument which violate the appearance of impropriety standard. The Appellant asks this honorable Court to correct these palpable errors and return this case to Circuit Court for further proceedings.

Respectfully submitted,

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Dated: March 1, 2016

CERTIFICATE OF SERVICE

I, Peter Bormuth, do certify that on March 1, 2016 I did mail a copy of Appellant's Reply to Appellee's Response to Appellant's Application for Leave to Appeal to Joesph A. Starr, Starr, Butler & Stoner PLLC, 20700 Civic Center Dr. Ste. 290, Southfield, MI 48076 by regular mail.

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